No. 90-714

In The
Supreme Court of the United States
October Term, 1990

RITAELLEN M. MURPHY, et al.,

Petitioners,

vs.

RICHARD M. RAGSDALE, M.D., et al.,

Respondents.

Petition for Writ of Certiorari Before Judgment to the United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether, without legislative authority, the executive branch, administrative agencies, and private citizens can utilize a consent decree to rewrite an express statutory scheme duly enacted by the Illinois General Assembly?

2. Whether the judicial authority of the District Court extends through federalism into state sovereignty and allows it to enter a consent decree in violation of the exclusive legislative prerogative of the Illinois General Assembly?

3. Whether *Missouri v. Jenkins* should be reconsidered and limited in the scope of its application?

4. Whether, pursuant to the original intent of and the principles intended in the United States Constitution and the Illinois State Constitution, the State of Illinois can both acknowledge and establish an unborn child's personhood from conception and protect her life and liberty interests?

5. Whether unborn children, as incompetents, have the same protectable life and liberty interests as Nancy Cruzan in *Cruzan v. Director, Missouri Department of Health*?

6. Since the constitutional validity of Section 1 of the Illinois Abortion Act, establishing the personhood of the unborn child and acknowledging the unborn child as a human being, turns on the validity of *Roe v. Wade*, is this duly enacted statutory provision constitutionally valid?

7. Should *Roe v. Wade* be explicitly overruled?

8. Whether the *Dred Scott v. Sandford* decision should be recognized as error and explicitly overruled ab initio?

PARTIES TO THE PROCEEDINGS

Petitioners-Plaintiffs-Appellants:

Ritaellen M. Murphy, who has a Bachelors of Science in Nursing, is a practicing Registered Nurse, a Critical Care Registered Nurse, a Trauma Nurse Specialist, an advanced Cardiac Life Support Instructor, a consultant to the American Heart Association, a member of the Advanced Cardiac Life Support-Target Action Group Committee, a Pediatric Advanced Life Support Instructor, a Cardiac Pulminary Resuscitation affiliate facility member, and the Director of Life Support Services (a division of the Emergency Medical Services Department) at Loyola Hospital, which is a Level I Trauma Center in Maywood, Illinois. She is certified in Mobile Intensive Care Nursing. She is a member of the plaintiff class of Illinois women of child-bearing age who desire or may desire an abortion sometime in the future.

Penny R. Greenwood, who has a Bachelors of Science in Psychology, is a practicing Registered Nurse, a Trauma Nurse Specialist, former Department Head of Out-Patient Surgery, and a member of the emergency room medical staff at Hinsdale Hospital in Hinsdale, Illinois. She is certified both in Advanced Cardiac Life Support and in Cardiopulmonary Resuscitation. She is experienced in hospital obstetrical care. She is a member of the plaintiff class of Illinois women of child-bearing age who desire or may desire an abortion sometime in the future.

Petitioners-Proposed Intervenors-Appellants:

Kenneth M. Reed, as an expectant father, proposed intervention on behalf of his unborn child and on behalf of all

other Illinois unborn children.

Mark I. Aughenbaugh, as an expectant father, proposed intervention on behalf of his unborn child and on behalf of all other Illinois unborn children.

Respondents-Plaintiffs-Appellees:

Richard M. Ragsdale, M.D., is an experienced abortionist, performing over 3,500 abortions per year. He filed suit on behalf of all physicians and surgeons who perform or desire to perform abortions in the State of Illinois.

Northern Illinois Women's Center is an Illinois corporation performing abortions in Rockford, Illinois.

Margaret Moe is a registered nurse, who is the sole owner and executive director of a medical facility, which desires to perform abortions in Cook County, Illinois.

Sarah Roe and **Jane Doe** are women who have had abortions in the past and may desire abortions in the future. They filed suit on behalf on all women of child-bearing age who desire or may desire an abortion sometime in the future.

Respondents-Defendants-Appellees:

Bernard J. Turnock, M.D., is the Director of the Department of Public Health of the State of Illinois and was sued in his official capacity. He is responsible for the enforcement of the Ambulatory Surgical Treatment Center Act and the promulgation and enforcement of regulations under that Act, and has certain administrative responsibilities under the Health Facilities Planning Act.

Neil F. Hartigan was sued in his official capacity as

Attorney General of the State of Illinois. He is charged with the defense of challenges to the Medical Practice Act, the Ambulatory Surgical Treatment Center Act, the Abortion Act and the Health Facilities Planning Act, and their respective regulations, throughout the State of Illinois. In addition, as chief legal officer of the State of Illinois, the Attorney General represents the directors of state agencies in their enforcement activities, and upon referral by these agencies, has certain enforcement responsibilities on behalf of these agencies.

Richard M. Daley was the State's Attorney of Cook County and was sued in his official capacity, and as representative of the defendant class of all state's attorneys of the one hundred and one other counties of the State of Illinois. He was succeeded in office by **Cecil Partee**, the present Cook County State's Attorney. Mr. Partee was substituted as the named defendant and as the representative of the defendant class of state's attorneys. The state's attorneys are the chief legal officers of the counties and represent the People of the State of Illinois in the enforcement of criminal statutory provisions, including those found in the Abortion Act.

Gary L. Clayton was the director of the Department of Registration and Education and was sued in his official capacity. He was ultimately succeeded by **Kevin K. Wright**, the Director of the successor agency, the Department of Professional Regulation. **Steven F. Selcke** and **Robert C. Thompson** had served as agency directors between the respective terms of office of Mr. Clayton and Mr. Wright. All four individuals had previously been empowered to implement, administer, and enforce the Medical Practice Act. Mr. Wright is presently so empowered.

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In The
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RICHARD M. RAGSDALE, M.D., etc., et al.,
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and

RITAELLEN M. MURPHY, et al.,
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vs.

BERNOCK J. TURNOCK, M.D., etc., et al.,
Respondents-Defendants-Appellees,

and

KENNETH M. REED, et al.,
Petitioners-Proposed Intervenors-Appellants.

Petition for Writ of Certiorari Before Judgment
to the United States Court of Appeals
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PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

Ragsdale v. Turnock
Present Petition For Certiorari

Ragsdale v. Turnock is currently pending before the Court of Appeals for the Seventh Circuit. The present petition for certiorari is being brought before rendition of judgment. The August 20, 1990 order of the Court of Appeals denying the suggestion for hearing en banc was corrected on August 22, 1990 and is reproduced in Appendix L.

The District Court's March 5, 1990 order denying the intervention of petitioners, Reed and Aughenbaugh, is reproduced in Appendix A. The March 22, 1990 order approving the settlement proposal and denying the petition to reconsider the denial of intervention is reported in *Ragsdale v. Turnock*, 734 F.Supp. 1457 (N.D.Ill. 1990), and is reproduced in Appendix B. The judgment order of March 22, 1990 and the order of April 19, 1990 modifying the March 22, 1990 order are reproduced in Appendix C and D.

Ragsdale v. Turnock (88-790)
Original Petition For Certiorari

The Supreme Court of the United States granted certiorari on July 3, 1989, but reserved consideration of the question of jurisdiction until the hearing on the merits. *Turnock v. Ragsdale*, 109 S.Ct. 3239, 106 L.E.2d 587 (1989). On December 1, 1989 the Court granted the joint motion to defer further proceedings. *Turnock v. Ragsdale*, 110 S.Ct. 532, 107 L.Ed.2d 530 (1989). However, *Turnock v. Ragsdale* (88-790) is presently pending before the Court and has been carried over to the Court's 1990-91 term. *Turnock v. Ragsdale*, 59 U.S.L.W. 3013 (July 17, 1990).

The Court of Appeals' March 10, 1988 opinion is reported in *Ragsdale v. Turnock*, 841 F.2d 1358 (7th Cir. 1988), and is reproduced in 88-790 Appendix A. The judgment order of March 10, 1988, and the April 13, 1988 order amending the March 10, 1988 opinion, are reproduced in 88-790 Appendix B and C. The August 12, 1988 order and the August 16, 1988 amended order denying the petition for rehearing and the suggestion for rehearing en banc are reproduced in 88-790 Appendix E and D.

The District Court's November 27, 1985 opinion is reported in *Ragsdale v. Turnock*, 625 F.Supp. 1212 (N.D.Ill. 1985), and reproduced in 88-790 Appendix G. The class certification and preliminary injunction order entered December 11, 1985 is reproduced in 88-790 Appendix F.

JURISDICTION

This action was originally brought under 28 U.S.C. Sections 2201 and 2202 and 42 U.S.C. Section 1983 challenging the constitutionality of portions of the Ambulatory Surgical Treatment Center Act, the Medical Practice Act and the Health Facilities Planning Act, and under 28 U.S.C. Section 1343 seeking declaratory and injunctive relief in a class action.

The District Court's November 27, 1985, and December 11, 1985, orders preliminarily enjoined enforcement of portions of the Acts and the rules promulgated thereunder for first and/or early second trimester abortions or other abortion-related procedures. *Ragsdale v. Turnock*, 625 F.Supp. 1212 (N.D.Ill. 1985), is reproduced in 88-790 Appendix G. The December 11, 1985 judgment order is not reported but is reproduced in 88-790 Appendix F.

With jurisdiction based on 28 U.S.C. Section 1292, the Court of Appeals vacated as moot one portion of the District Court's decision, held unconstitutional the other challenged provisions, and affirmed the remainder of the decision on March 10, 1989. *Ragsdale v. Turnock*, 841 F.2d 1358 (7th Cir. 1988), is reproduced in 88-790 Appendix A. Its March 10, 1988 judgment order and the April 13, 1988 order amending the March 10, 1988 slip opinion are reproduced in 88-790 Appendix B and C. The August 12, 1988 order and the August 16, 1988 amended order denying both the petition for rehearing and the suggestion for rehearing en banc are reproduced in 88-790 Appendix E and D.

With jurisdiction based on 28 U.S.C. Section 1254(2), defendants Turnock, Hartigan, and Selcke filed their notice of appeal in the Court of Appeals on November 7, 1988. (Reproduced in 88-790 Appendix H). On July 3, 1989 the Supreme Court accepted the case for argument. *Turnock v. Ragsdale*, 109 S.Ct. 3239, 106 L.Ed.2d 587 (1989). On December 1, 1989, the Court granted the joint motion to defer further proceedings. *Turnock v. Ragsdale*, 110 S.Ct. 532, 107 L.Ed. 530 (1989). However, *Turnock v. Ragsdale* (88-790) has been carried over to the Court's 1990-91 docket. *Turnock v. Ragsdale*, 59 U.S.L.W. 3013 (July 17, 1990).

The settlement proposal considered by the District Court would permanently enjoin enforcement of portions of the Acts and the rules promulgated thereunder for abortions and abortion-related procedures performed from conception to birth. Limited Procedure Specialty Centers (Pregnancy Termination Specialty Centers) would be created with their own separate standard of medical regulation. Many abortion sites would be excluded completely from all medical regulations and licensing requirements of the State of Illinois. A February 13, 1990 deadline was set by the District Court for interested parties to file their written objections to the settlement proposal.

On February 13, 1990, petitioners, Murphy and Greenwood, filed their written objections, and petitioners, Reed and Aughenbaugh, filed their petition to intervene. At the fairness hearing on February 23, 1990, petitioners, Murphy, Greenwood, Reed and Aughenbaugh, personally appeared and through counsel presented their oral objections to the settlement proposal.

The March 5, 1990 order denying intervention is reproduced in Appendix A. On March 15, 1990 a petition to reconsider was filed. The March 22, 1990 judgment order, and the March 22, 1990 order, which approved the settlement proposal and denied the petition to reconsider the petition to intervene, are reproduced in Appendix C and B. On March 30, 1990, petitioners, Murphy and Greenwood, filed a Rule 52(b) petition, which was granted in part by the the April 19, 1990 order which is reproduced in Appendix D.

With jurisdiction based on 28 U.S.C. Section 1291, on April 20, 1990, petitioners, Murphy and Greenwood, and petitioners, Reed and Aughenbaugh, filed separate notices of appeal, which are reproduced in Appendix F and E. The appeal of petitioners, Reed and Aughenbaugh, included the District Court's March 5, 1990 order.

On ~~April 23~~, 1990 the order of April 19, 1990 granting the Rule 52(a) petition was docketed. With jurisdiction still based on 28 U.S.C. Section 1291, on May 18, 1990, petitioners, Murphy and Greenwood, and petitioners, Reed and Aughenbaugh, again filed separate notices of appeal which included the April 19, 1990 order. (Reproduced in Appendix H and G). The appeal of petitioners, Reed and Aughenbaugh, still included the March 5, 1990 order.

On July 9, 1990 the District Court refused to supplement the record with the over 1200 telegrams, models, let-

ters and other papers it considered in approving the settlement proposal. (Reproduced at Appendix K).

The Court of Appeals consolidated the first two appeals on May 21, 1990 and consolidated all four appeals on June 7, 1990. (Reproduced in Appendix I and J). The motion for hearing en banc was denied on August 20, 1990 by order corrected on August 22, 1990. (Reproduced in Appendix L).

With jurisdiction based on 28 U.S.C. Sections 1254(1) and 2101(e), this petition for certiorari is being made to the Supreme Court of the United States.

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS INVOLVED

Federal Constitutional Provisions

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment IX:

The enumeration in the Constitution of certain rights,

shall not be construed to deny or disparage others retained by the people.

United States Constitution, Amendment X:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

United States Constitution, Amendment XIII:

Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

State Constitutional Provisions

Illinois Constitution of 1970, Article I, Section 1:

All men are by nature free and independent and have certain inherent and inalienable rights among which are life, liberty and the pursuit of happiness. To secure these rights and the protection of property, governments are insti-

tuted among men, deriving their just powers from the consent of the governed.

Illinois Constitution of 1970, Article I, Section 2:

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Illinois Constitution of 1970, Article I, Section 12:

Every person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, property or reputation. He shall obtain judgment by law, freely, completely, and promptly.

Illinois Constitution of 1970, Article I, Section 23:

A frequent recurrence to the fundamental principles of civil government is necessary to preserve the blessings of liberty. These blessings cannot endure unless the people recognize their corresponding individual obligations and responsibilities.

Illinois Constitution of 1970, Article I, Section 24:

The enumeration in this Constitution of certain rights shall not be construed to deny of disparage others retained by the individual citizens of the State.

Illinois Constitution of 1970, Article II, Section 1:

The legislative, executive and judicial branches are separate. No branch shall exercise powers properly belonging to another.

Illinois Constitution of 1970, Article IV, Section 1:

The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives, elected by the electors from 50 Legislative Districts and 118 Representative Districts.

Illinois Constitution of 1970, Article V, Section 15:

The Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.

State Statutes

Abortion Act

Ill.Rev.Stat., Ch. 38, Sec. 81-21:

(*Section 1 of the Abortion Act*)

It is the intention of the General Assembly of the State of Illinois to reasonably regulate abortion in conformance with the decisions of the United States Supreme Court of January 22, 1973. Without in any way restricting the right of privacy of a woman or the right of a woman to an abortion under those decisions, the General Assembly of the State of Illinois do solemnly declare and find in reaffirmation of the longstanding policy of this State, that the unborn child is a human being from the time of conception and is, therefore, a legal person for purposes of the unborn child's right to life and is entitled to the right to life from conception under the laws and Constitution of this State. Further, the General Assembly finds and declares that longstanding policy of this State to protect the right to life of the unborn child from conception by prohibiting abortion unless necessary to preserve the life of the mother is impermissible only because of the decisions of the United States Supreme Court and

that, therefore, if those decisions of the United States Supreme Court are ever reversed or modified or the United States Constitution is amended to allow protection of the unborn then the former policy of this State to prohibit abortions unless necessary for the preservation of the mother's life shall be reinstated.

It is the further intention of the General Assembly to assure and protect the woman's health and the integrity of the woman's decision whether or not to continue to bear a child, to protect the valid and compelling state interest in the infant and unborn child, to assure the integrity of marital and familial relations and the rights and interests of persons who participate in such relations, and to gather data for establishing criteria for medical decisions. The General Assembly finds as fact, upon hearings and public disclosures, that these rights and interests are not secure in the economic and social context in which abortion is presently performed.

Ill.Rev.Stat., Ch. 38, Sec. 81-30.1:
(*Section 10.1 of the Abortion Act*)

Any physician who diagnoses a woman as having complications resulting from an abortion shall report, within a reasonable period of time, the diagnosis and a summary of her physical symptoms to the Illinois Department of Public Health in accordance with procedures and upon forms required by such Department. The Department of Public Health shall define the complications required to be reported by rule. The complications defined by rule shall be those which, according to contemporary medical standards, are manifested by symptoms with severity equal to or greater than hemorrhaging requiring transfusion, infection, incomplete abortion, or punctured organs. If the physician making the diagnosis of a complication knows the name or location of the facility where the abortion was performed, he shall report such information to the Department of Public Health.

Any physician who intentionally violates this Section shall be subject to revocation of his license pursuant to paragraph (22) of Section 22 of the Medical Practice Act of 1987.

Ill.Rev.Stat., Ch. 38, Sec. 81-31.1(a) & (b):
(*Section 11.1 of the Abortion Act*)

(a) The payment or receipt of a referral fee in connection with the performance of an abortion is a Class 4 felony.

(b) For purposes of this Section, "referral fee" means the transfer of anything of value between a doctor who performs an abortion or an operator or employee of a clinic at which an abortion is performed and the person who advised the woman receiving the abortion to use the services of that doctor or clinic.

Ambulatory Surgical Treatment Center Act
Ill.Rev.Stat., Ch. 111 1/2, Sec. 157-8.1 et seq.
(Reproduced in 88-790 Appendix I)

Health Facilities Planning Act
Ill.Rev.Stat., Ch. 111 1/2, Sec. 1151 et seq.
(Reproduced in 88-790 Appendix J)

Medical Practice Act
Ill.Rev.Stat., Ch. 111, Sect. 4400-22
(Reproduced in 88-790 Appendix K)

State Regulations

Ambulatory Surgical Treatment Center licensing Requirements
77 Ill.Adm.Code, Ch. 1, Sec. 205, Subch. b
(Reproduced in 88-790 Appendix L)

August 15, 1990 Amendments to Ambulatory Surgical Treatment Center Licensing Requirements
77 Ill.Adm.Code, Ch. 1, Sec. 205
(Reproduced in Appendix M)

STATEMENT OF THE CASE

On December 1, 1990 by joint motion *Turnock v. Ragsdale* (88-790) was deferred on the eve of oral arguments without the terms of the settlement proposal being disclosed to the Supreme Court. Negotiations had produced a proposed consent decree which would reject, by permanent injunction, portions of the Ambulatory Surgical Treatment Center Act, the Health Facilities Planning Act and the Medical Practice Act, for all three trimesters of pregnancy.

The original preliminary injunction of the District Court in 1985, affirmed by the Court of Appeals in 1988, had limited the injunction of the Acts to the first and/or early second trimester of pregnancy. Neither the District Court in 1985 nor the Court of Appeals in 1988 had found the Acts unconstitutional for the late second and/or third trimesters of pregnancy. And the District Court in 1990 did not make a new finding of unconstitutionality prior to or upon approving the settlement proposal.

The express statutory scheme duly enacted by the Illinois General Assembly has been permanently enjoined and rejected by the consent of the parties and the orders of the District Court. No constitutional authority is cited by either the parties or the District Court for this rejection.

The original statutory scheme of the Illinois General Assembly provided that all abortions in Illinois were to be

performed in either ambulatory surgical treatment centers or hospitals. Under the settlement proposal any geographical location within the borders of Illinois can be an abortion site so long as it is not primarily used for surgical procedures. And these sites would be totally excluded from all state licensing requirements. All abortions performed at these sites would be outside of all state medical regulation. See enjoined Ill.Rev.Stat., Ch. 111 1/2, Sec. 157-8.3 and *Ragsdale*, 734 F.Supp. at 1460, note 7.

In addition, the settlement proposal refers to abortion clinics as Limited Procedure Specialty Centers (Pregnancy Termination Specialty Centers) and allows them to operate with their own separate--and less restrictive--standard of state medical regulation. See 77 Ill.Adm.Code, Ch. 1, Sec. 205, Subpt. G, Sec. 205.710 in Appendix M and *Ragsdale*, 734 F.Supp. at 1460. For example, abortionists scrubbing for surgery and janitors cleaning toilet scrub brushes can use the same sink. Ironically, before being enjoined and then rewritten, this same section, Section 205.710, stated simply that all abortions "shall be provided to the public with the same standards of safety, effectiveness, and regard for patients rights as any other health service."

The consent decree would establish a judicially approved double standard. First, as noted, some abortion sites are excluded from all state medical regulation and licensing requirements. Other sites are not excluded. The Ambulatory Surgical Treatment Center Act makes no such distinction. Second, portions of the Health Facilities Planning Act will not be enforced against Limited Procedure Specialty Centers but will be enforced against other surgical centers. The Health Facilities Planning Act makes no such distinction. *Ragsdale*, 734 F.Supp. at 1466-69. No statutory authority is cited by either the parties or the District Court to legalize this discriminatory enforcement.

The settlement proposal also effectively enjoins in part the enforcement of certain portions of the Abortion Act, which were never plead in these procedings, and the constitutionality of which was never challenged.

First, Section 10.1 requires a physician to report abortion complications to the Illinois Department of Public Health. Ill.Rev.Stat., Ch. 38, Sec. 81-30.1. But the consent decree would enjoin the reporting of abortion complications by physicians at ambulatory surgical treatment centers. Ambulatory Surgical Center Licensing Requirements, 77 Ill.Adm.Code, Ch. 1, Sec. 205, Subpart G., Sec. 205.760-Reports, in 88-790 Appendix at page App. 223.

Second, Section 11.1 makes the payment or receipt of a referral fee in connection with the performance of an abortion a criminal offense. Ill.Rev.Stat., Ch. 38, Sec. 81-31.1. But the consent decree would enjoin the referral fee prohibition for abortion counselors. Ambulatory Surgical Center Licensing Requirements, 77 Ill.Adm.Code, Ch. 1, Sec. 205, Subpart G., Sec. 205.730(b)-Counseling, in 88-790 Appendix at page App. 221.

The new medical regulations adopted August 15, 1990 pursuant to the consent decree are also inconsistent with prior agency imperatives. First, since abortion procedures are subject to particular complications and require specialized postoperative care, agency concern mandated the presence of a supervising obstetrical or gynecological nurse. 77 Ill.Adm.Code, Ch. 1, Sec. 205, Subpart G., Sec. 205.720-Personnel, Agency Note, in 88-790 Appendix at page App. 220. Second, since a woman cannot make a truly voluntary decision while undressed on the procedure table, agency concern mandated that a woman learn of the risks and alternatives to an abortion outside of the coercive setting of the procedure room. 77 Ill.Adm.Code, Ch. 1, Sec.

205, Subpart G., Sec. 205.730-General Patient Care, Agency Note, in 88-790 Appendix at page App. 222. Yet, these two regulated concerns would be enjoined by the consent decree.

Petitioners, Murphy and Greenwood, are practicing emergency room registered nurses and members of the plaintiff class of Illinois women of child-bearing age who desire or may desire an abortion sometime in the future. Upon learning of the terms of the settlement proposal, these petitioners personally concluded that the health and medical care of women seeking abortions had been illegally, unconstitutionally, and dangerously compromised. They filed timely written objections, personally appeared at the fairness hearing, and through counsel voiced their oral objections to the proposed consent decree.

Moreover, the settlement proposal also effectively enjoined enforcement of Section 1 of the Abortion Act which acknowledges unborn children as human beings and which establishes the state personhood of unborn children. First, the consent decree allows abortion procedures to be performed outside of ambulatory surgical treatment centers and hospitals in sites least able to protect the life and liberty interests of an unborn child. Second, future regulations are restricted to health and safety concerns for the woman and by permanent injunction cannot include health and safety concerns for the unborn child. Third, Pregnancy Termination Specialty Centers, or PTSC's, can perform abortions on a woman with an unborn child of 18 weeks gestational age. In the future an unborn child of a higher gestational age may be terminated at a PTSC dependant solely upon health and safety concerns for the woman. The health and safety of the unborn child by permanent injunction is not to be considered. And at no time is the personhood of the unborn child in Illinois either acknowledged or considered. *Ragsdale*, 734 F.Supp. at 1466, at 1469, and at 1470, respectively.

Petitioners, Reed and Aughenbaugh, as expectant fathers of unborn children, concluded that the consent decree illegally, unconstitutionally, and dangerously compromised the health, safety, life and liberty interests, and personhood of their unborn children. They filed their written objections through their petition to intervene, personally appeared at the fairness hearing, and through counsel voiced their oral objections to the proposed consent decree.

The District Court's March 22, 1990 order, approving the settlement proposal and entering the consent decree, acknowledged that the "consent decree introduces a new scheme" and recognized that "the settlement creates a network of statutes and rules regulating the provisions of abortion services." *Ragsdale*, 734 F.Supp. at 1460, and at 1461, respectively. The new rules and medical regulations integral to this newly created organic statutory scheme were formally adopted on August 15, 1990 and are reproduced in Appendix M.

The District Court's March 22, 1990 order is silent as to the Illinois Constitutional provisions which provide for a clear separation of power between the executive and legislative branch and which vest all legislative authority in the Illinois General Assembly. The order is also silent as to other Illinois Constitutional provisions which allow the unborn child to protect her rights and which mandate the courts to allow her to do so.

Petitioners, Murphy, Greenwood, and petitioners, Reed, and Aughenbaugh, filed separate appeals which were consolidated by the Seventh Circuit. Petitioner, Reed and Aughenbaugh, also included in their appeal the denial of their intervention. All briefs have been timely submitted. Oral arguments have been set for December 4, 1990. Judgment has not been rendered by the Seventh Circuit.

The prior December, 1985 order of the District Court was scheduled for oral argument before the Supreme Court in December, 1989--four years later. Petitioners are now appealing to the Supreme Court to avoid additional and needless delay and to present questions of imperative public importance in a case which the Supreme Court has already recognized as having exceptional importance and which is presenting pending on the Court's 1990-91 docket.

SUMMARY OF ARGUMENT: The Jurisdictional Questions Presented Are Of Imperative Public Importance

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This case is about authority. A district court rewrites statutes without authority based upon a settlement proposal which creates a new statutory scheme without authority. The personhood of Illinois unborn children is ignored without authority while their life and liberty interests are compromised without authority. What new constitutional imperative will now be imposed upon the States as justification? Will this imperative be more indicative of probation restrictions for criminals or constitutional guidelines for States?

This case is also about the original intent and the principles intended by our forefathers in forming this great nation and the present judicial threat to its continued existence. Like a cancer, the unsound principles of *Roe* and its progeny have grown through federalism into state sovereignty and presently threaten the very independence of the States. Ironically, as parts of the world are experiencing their first independence in decades, the federal judicial grip is tightening around the separate and independent existence of the States. Was the intent of our forefathers for the States to be treated as counties within a One Nation State?

The Supreme Court recognized the exceptional importance of *Turnock v. Ragsdale* (88-790) on July 3, 1989 by accepting the case for argument. Upon joint motion the Court deferred its consideration of *Turnock v. Ragsdale* on December 1, 1989. The Court was never advised of the terms of the settlement proposal.

On March 22, 1990 the District Court approved the settlement proposal over the objections of petitioners and others. Administrative regulations were adopted pursuant thereto on August 15, 1990. Yet the District Court had no authority to approve the settlement proposal because it lacked subject matter jurisdiction to rewrite statutes enacted by the Illinois General Assembly. No agency had any authority to adopt any regulations pursuant thereto since regulatory authority is limited by the statutes enacted by the Illinois General Assembly and cannot be expanded by a new statutory scheme created by the consent of the parties.

A federal court cannot extend its judicial authority through federalism into state sovereignty, ignore the separation of powers, and violate the exclusive legislative prerogative of the Illinois General Assembly. Such federal judicial activism is totally without constitutional justification, and any order entered pursuant thereto is void ab initio. Without subject matter jurisdiction, no court--federal or state--can constitutionally proceed further. The void action of the parties and the District Court justifies a deviation from normal appellate practice. The Court can immediately consider this disabling judicial blow to state sovereignty.

This expansion of power in the federal judiciary beyond all precedent transgresses the basic principles defining judicial power and requires immediate settlement by the Court. Granting certiorari before the rendering of judgment would clearly establish the imperative public importance

that the Court places upon the limitation of federal judicial authority within constitutional constraints. The Court could immediately limit the application of *Missouri v. Jenkins*, which can be construed as an open door to judicial activism which authorizes the circumvention of state sovereignty and legislative prerogative found in *Ragsdale v. Turnock*.

Moreover, Section 1 of the Abortion Act provides that once *Roe v. Wade* is modified, an unborn child in Illinois is by law recognized as a human being and as a legal person from the time of conception. Since *Webster v. Reproductive Health Services* modified *Roe v. Wade*, an unborn child in Illinois is now entitled to the right to life from conception and is guaranteed legal access to the courts to allow her to protect those rights.

The constitutional validity of Section 1 of the Abortion Act actually turns on the constitutional validity of *Roe v. Wade*. The Court can now examine *Roe v. Wade* and its progeny and determine whether *Roe v. Wade* should be explicitly reversed. Such a reexamination of *Roe v. Wade* is of imperative public importance, and includes the questions of personhood and standing raised in *Dred Scott v. Sandford* and whether the life and liberty interests of unborn children as incompetents are recognized by *Cruzan v. Director, Missouri Department of Health*.

Joining *Turnock v. Ragsdale* (88-790), which is presently pending on the Court's 1990-1991 docket, with *Ragsdale v. Turnock* would give the Court an immediate opportunity both to halt the present judical threat to state sovereignty and legislative prerogative and to reexamine *Roe v. Wade* in light of its recent expansion by the Seventh Circuit to include the sale of unborn children up to the moment before birth. *Lifchez v. Hartigan* , __ F.2d __ (7th Cir. Sept. 10, 1990). Unborn children can now be sold for body parts, like old cars.

ARGUMENT ONE:
The District Court Lacked Subject Matter Jurisdiction To Enter A Consent Decree Outside Of Its Inherent Power

In Illinois only the General Assembly can constitutionally enact statutes. Yet, the executive branch, agencies and private citizens requested the District Court to enter a consent decree which rewrites the express statutory scheme duly enacted by the General Assembly. How can a federal court take any judicial action without subject matter jurisdiction? Or does federal judicial authority extend through federalism into state sovereignty and allow the entry of a consent decree in violation of the exclusive legislative prerogative of the General Assembly?

Illinois has long recognized a separate and distinct separation of powers between the legislative, executive and judicial branches are separate. No branch may exercise powers belonging to another. Illinois Constitution of 1970, Article II, Section 1.

In Illinois the legislative power is vested exclusively in the General Assembly. Illinois Constitution of 1970, Article IV, Section 1. On common-law principles, as well as settled constitutional law, this legislative power cannot be delegated to another body, authority or person. *People v. Tibbitts*, 56 Ill.2d 56, 305 N.E.2d 152, 155 (1973).

This sovereign legislative power vested in the General Assembly is consistent with the federal Constitution which does not require a specific separation or allocation of powers within state government. Debate as to the wisdom of the allocation of powers within any state government is foreclosed to the federal judiciary. *Coniston Corporation v. Village of Hoffman Estates*, 844 F.2d 461, 469 (7th Cir. 1988).

The Illinois Attorney General, as the legal officer of the State, is a member of the executive branch and is constitutionally prohibited from exercising the powers of the legislative branch. Illinois Constitution of 1970, Article II, Section 1, and Article V, Section 15.

Thus, the representations of the Attorney General are not binding on the courts and legislature of the State. *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 99 S.Ct. 3055, 61 L.Ed.2d 823 (1979). The Attorney General cannot reject legislation, or hold particular statutes to be unconstitutional, or otherwise be the binding determinator of duly enacted statutes. *National Revenue Corporation v. Violet*, 807 F.2d 285, 288 (1st Cir. 1986).

The Cook County State's Attorney is a member of the county executive branch with the Cook County Board serving as the county legislative branch. Any state's attorney, including the Cook County State's Attorney, is not authorized to act for the county board. If he does, his actions will be judicially held to be void ab initio. *Will County v. George*, 103 Ill.App.3d 1016, 59 Ill.Dec. 264, 431 N.E.2d 765 (1982).

If the Cook County State's Attorney cannot legislate for the Cook County Board, he certainly cannot legislate for the Illinois General Assembly. His judicial designation by the District Court as class representative for all Illinois state's attorneys does not create constitutionally recognized legislative authority. The Cook County State's Attorney is in the same position as the Illinois Attorney General. Neither can legislate for the Illinois General Assembly.

Yet the settlement proposal rejects by permanent injunction portions of three separate express statutes--the Ambulatory Surgical Treatment Center Act, the Medical

Practice Act, and the Health Facilities Planning Act--and ignores provisions of one express statute--the Abortion Act. The express statutory scheme duly enacted by the Illinois General Assembly has been illegally rejected. *Violet*, supra. A court cannot constitutionally rewrite a statute under the guise of construing it. *Wynn v. Scott*, 449 F.Supp. 1302, 1330 (N.D.Ill. 1978), opinion adopted in full sub-nom *Wynn v. Carey*, 599 F.2d 193 (7th Cir. 1979). The order approving the settlement proposal which rejects and rewrites statutes duly enacted Illinois General Assembly is void ab initio.

The Department of Public Health, the Department of Professional Regulation, and the Ambulatory Surgical Treatment Center Board are all administrative agencies. These agencies have no greater powers than those conferred upon them by the legislation creating them. *Village of Lombard v. Pollution Control Board*, 66 Ill.2d 503, 6 Ill.Dec. 867, 363 N.E.2d 814, 815 (1977). And the Illinois General Assembly in delegating to these agencies the performance of certain functions may not invest them with arbitrary powers. The General Assembly cannot constitutionally delegate the power to legislate. *Tibbitts*, 305 N.E.2d at 155.

In direct contrast, the August 15, 1990 Amendments to the Ambulatory Surgical Treatment Center Licensing Requirements, 77 Ill. Adm. Code, Ch. 1, Section 205, were not authorized by duly adopted statutory enactments of the Illinois General Assembly and were adopted clearly outside the scope of statutory authority provided for by the Illinois General Assembly.

The General Assembly's express statutory scheme required, among other provisions, that all abortions are to be performed at medically regulated sites. Yet under the settlement proposal, so long as the site of the abortion is not devoted primarily to the performance of surgical procedures,

an abortion can be performed without any medical regulation. An abortion can take place in the patient's home, on a boat, in a plane, on a train, in a truck--any place not primarily used for surgery. Back alley abortions can become legal and unregulated. Yet the agencies had no authority to mandate such action through their consent to the settlement proposal. *Village of Lombard*, 363 N.E.2d at 815.

In addition, the August 15, 1990 Amendments created separate and distinct regulations for Limited Procedure Specialty Centers (Pregnancy Termination Specialty Centers). No statute duly enacted by the Illinois General Assembly authorized the creation of these centers. The agencies had no authority either to create these centers or to adopt a separate regulatory scheme for them.

A district court should not stray from its judicial province and enter an order which permits administrative agencies to engraft their own notions outside of express statutory authority. *Vermont Yankee Nuclear Power Corp. v. Natural Defense Council, Inc.*, 435 U.S. 519, 98 S.Ct. 119 55 L.Ed.2d 460 (1978)), *Tibbitts*, *supra*, and *Village Lombard*, *supra*. Yet, this is exactly what the District Court did in *Ragsdale v. Turnock*.

The wisdom or the lack of wisdom of a regulatory enactment is for the General Assembly to determine, and whether it is the best means to achieve the desired results, and whether the legislative discretion within its prescribed limits should be exercised in a particular manner are matters for the judgment of the General Assembly. The honest conflict of serious opinion does not suffice to bring these matters within the range of judicial cognizance. *Chicago Allis Mfg. Corp. v. Metropolitan Sanitary District of Greater Chicago*, 52 Ill.2d 320, 288 N.E.2d 436, 441 (1972). Such is the mistake of the District Court in *Ragsdale v. Turnock*.

That the respondents were able to convince the District Court to approve the settlement proposal does not alter its voidness. A consent decree's force comes from agreement rather than positive law, the validity of the consent decree depends upon the parties' authority to give assent. *Dunn v. Carey*, 808 F.2d 555, 559-560 (7th Cir. 1986). Courts must not allow consenting parties to act without authority. District courts must be on the lookout for such attempts to use consent decrees to make end runs around the legislature. *Kasper v. Board of Election Commissioners of the City of Chicago*, 814 F.2d 332, 340 (7th Cir. 1987).

First, the District Court should have looked to the authority of the Illinois Attorney General and the Cook County State's Attorney. Some rules of law are designed to limit the authority of public officeholders, to make them return to other branches of government to engage in certain acts. They may chafe at these restraints and seek to evade them. If they do, the officeholders have acted without authority, as they have here. *Dunn*, 808 F.2d at 560.

Second, the District Court should have looked to the authority of the Department of Public Health, the Department of Professional Regulation, and the Ambulatory Surgical Treatment Center Board. A consent decree is not a method by which state agencies may liberate themselves from the statutes enacted by the legislature that created them, as they attempted here. *Kasper*, 814 F.2d at 341-342.

Third, the District Court should have recognized that the private citizens, such as Dr. Ragsdale, simply have no authority at all. If they did, then other citizens with other beliefs or causes would have authority too. Pornographers could join with the Attorney General and rewrite obscenity statutes. Polluters could join with the Attorney General and rewrite environmental statutes.

The express statutes of the Illinois General Assembly become suggested guidelines rather than law. The constitutionally established legislative branch acts as an advisory board making recommendations to the federal judiciary.

The illegality and unconstitutionality of the conduct of the parties is a legal certainty. The March 22, 1990 order merely authorizes that conduct and initiates other conduct of a similar ilk. *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305 (7th Cir. 1980).

The District Court in *Ragsdale v. Turnock* judicially created the organic statutes which necessitated the enactment of the August 15, 1990 Amendments to the ASTC Licensing Requirements—a clearly illegal adaptation of unconstitutional judicial action and equally unconstitutional executive and agency action.

The March 22, 1990 order and the resulting regulations adopted pursuant thereto are a creature of judicial cloth, not legislative cloth and are not mandated by any statutory or regulatory provision. *Weinberger v. Catholic Action of Hawaii / Peace Education Project,* 454 U.S. 139, 141, 102 S.Ct. 197, 70 L.Ed.2d 298 (1981). These unconstitutional judicial and administrative actions, done with invalid executive consent, constitute a judicial cloth which is a shroud evidencing the death of state sovereignty and the birth of a national court system in which the States are treated as counties within one large Nation State.

On June 5, 1788, at the Virginia Convention convened that spring to consider the United States Constitution, Patrick Henry spoke of his abhorent fear of a consolidated government. His fear then need not become our reality now. By granting certiorari the Court can send a strong message to the federal judiciary and in the process reconsider *Missouri v. Jenkins*, 50 C.C.H. S.Ct. Bull. B2023 (April 18, 1990), and

limit its application. Without question, if *Missouri v. Jenkins* is not immediately limited and *Ragsdale v. Turnock* is not immediately settled by the Court, the door remains open for a flood of lower court cases well beyond the Court's ability to correct through certiorari in the future. State sovereignty will be destroyed, and with it, the republic as we know it.

ARGUMENT TWO: Failing To Consider The Personhood Of Illinois Unborn Children, The District Court Lacked Personal Jurisdiction

Since *Webster* modified *Roe,* unborn children in Illinois are now by law recognized as persons with full rights under the Illinois Constitution, including guaranteed access to the courts. Yet, by denying the intervention of Illinois unborn children, Reed and Aughenbaugh, and approving the consent decree, the District Court clearly violated their state constitutional rights, including their state life and liberty interests. Can the federal judiciary ignore the personhood of Illinois unborn children and without any constitutional authority deny their state constitutional rights?

Since 1975, Section 1 of the Abortion Act has acknowledged that the long standing policy of the State of Illinois to protect the right to life of an unborn child from conception by prohibiting abortion unless necessary to preserve the life of the mother is impermissible only because of the *Roe v. Wade* decision. Illinois Abortion Act, Section 1.

The Illinois Supreme Court has ordered that such a clearly expressed legislative concern for an unborn child must be considered by the courts. *Green v. Smith,* 71 Ill.2d 501, 17 Ill.Dec. 847, 377 N.E.2d 37, 41 (1978). In Illinois to suggest that a child can be considered an injury offends fun-

damental values attached to human life. *Cockrum v. Baumgartner*, 95 Ill.2d 193, 69 Ill.Dec. 168, 447 N.E.2d 385, 388 (1983). Illinois public policy strongly supports the preservation of the sanctity of human life, even if in an imperfect state. *Siemeniec v. Lutheran General Hospital*, 117 Ill.2d 230, 111 Ill.Dec. 302. 512 N.E.2d 691, 700 (1987).

Even the federal courts have recognized the rights of an unborn child in Illinois. In *Roberts v. Patel*, 620 F.Supp. 323 (N.D.Ill. 1985), a child named Joshua was injured in utero. The District Court acknowledged both that Illinois has expressed a strong public policy to protect an unborn child from the moment of conception, and that Illinois has actively sought to regulate abortions within constitutionally permissible parameters. The District Court concluded that in light of the strong Illinois policy favoring protection of an unborn child, and recognizing the unborn child's protectable interest, Joshua's mother's physicians owed a duty not only to Joshua's mother, but to Joshua as well. When treating a pregnant woman, the physician has two patients--the expectant mother and the unborn child. *Roberts*, 620 F. Supp. at 325-26.

Uncomfortable with these judicial determinations and the statutorily ratified public policy found in Section 1, various parties have attacked its constitutionality and have sought to enjoin it. These legal efforts have been futile. First, the unsuccessful constitutional attack on Section 1 is found in *Wynn v. Scott*, 449 F. Supp. 1302 (N.D. Ill. 1978). The plaintiffs alleged that Section 1 recited an impermissible state purpose. The District Court disagreed, refused to hold Section 1 unconstitutional, and held that it merely states that the intention of the General Assembly is to reasonably regulate abortions in conformity with Supreme Court decisions. *Wynn*, 449 F.Supp. at 1314. On appeal the Appellate Court affirmed the District Court. *Wynn v. Carey*,

599 F.2d 193 (7th Cir. 1979). Second, the unsuccessful attempt to enjoin Section 1 is found in *Charles v. Carey*, 627 F.2d 772 (7th Cir. 1980). Plaintiffs sought to enjoin it based on its wording. The Court of Appeals did not agree that Section 1, when read as a whole, expressed an unlawful purpose, and refused to enjoin it. *Charles*, 627 F.2d at 779. Three years later, the District Court also refused to permanently enjoin Section 1 for the same reason. *Charles v. Carey*, 579 F.Supp. 464, 466 (N.D.Ill. 1983).

Since the constitutionality of Section 1 has been upheld and the judiciary has refused efforts to enjoin it, the Court's decision in *Webster v. Reproductive Health Services*, 109 S.Ct. 3040, 106 L.Ed.2d 410 (1989), becomes of paramount importance since *Webster* modified *Roe*. *Webster*, 108 L.Ed.2d at 438. Indeed, the District Court could not have entered its March 22, 1990 order if *Roe* had not been modified.

In *Turnock v. Ragsdale* (88-790) both the District Court in 1985 and the Appellate Court in 1988 had previously enjoined enforcement of medical regulations during the first half of pregnancy. *Ragsdale v. Turnock*, 625 F.Supp. 1212 (N.D.Ill. 1985), and *Ragsdale v. Turnock*, 841 F.2d 1358 (7th Cir. 1988). In direct contrast, the March 22, 1990 order of the District Court did enforce some medical regulations during the first half of pregnancy. *Ragsdale v. Turnock*, 734 F.Supp. 1457 (N.D.Ill. 1990). The only basis the District Court had for reversing itself was the modification of *Roe*. And pursuant to Section 1, once *Roe* is modified, an unborn child in Illinois is by law recognized as a human being and as a legal person.

An Illinois unborn child may now enforce her state constitutional rights in the courts. Baby Reed and Baby Aughenbaugh, as legal persons under the laws and the Constitution of the State of Illinois, are entitled to appear in

court, retain legal representation to protect their legal interests, and are non-joined indispensable parties in *Ragsdale*. Yet, the District Court denied their petition to intervene as of right and even failed to acknowledge their personhood. Once again, the judicial application of *Roe* has proven to be doctrinally barren.

However, the Court has not refrained from reconsidering a prior construction of the Constitution which has proven unsound in principle and unworkable in practice. *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528, 546, 105 S.Ct. 1005, 83 L.Ed.2d 1016 (1985). Since the Court cannot abdicate its constitutional responsibility to respect state sovereignty, the constitutional barrier imposed by *Roe* must be removed. The task of preserving and balancing the life and liberty interests of the unborn child with those of her mother should be left to the "laboratory" of the states. See *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311, 52 S.Ct. 371, 76 L.Ed 747 (1932).

ARGUMENT THREE: State And Federal Life And Liberty Interests Of Illinois Unborn Children Were Not Considered By The District Court

In 1820 the Slave State of Mississippi protected the most defenseless--the mentally disturbed, the seriously retarded and unborn children. *State v. Jones*, 2 Miss. (One Walker) 39 (1820). The Supreme Court has already recognized the liberty interests of the mentally disturbed and the seriously retarded. *Parham v. J.R.*, 442 U.S. 584, 600, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979), and *Youngberg v. Romeo*, 457 U.S. 307, 420, 102 S.Ct. 2452, 73 L.Ed.2d 28 (1982). But the Court has not yet spoken to the life and liberty interests of unborn children. Certainly, the Court can provide no less for unborn children--the most defenseless of all.

An unborn child is temporarily incompetent until her emancipation as an adult. From conception until birth is just the first part of that incompetence. To deny the liberty interests of an unborn child would give her less protection at the end of the 20th century than she had in the Slave State of Mississippi at the beginning of the 19th century. Such a holding is inconsistent with both the original intent and the principles intended in the United States Constitution and in the 5th, 9th, 10th, 13th and 14th Amendments. Fortunately, with statutorily acknowledged personhood, the Illinois Constitution does establish the state liberty interests of an unborn child and allow her to protect those interests in the judicial system. Illinois Constitution of 1970, Article I, Sections 1, 2, 12, 23 and 24. Yet, the District Court in *Ragsdale v. Turnock* failed to consider these interests at all.

Finally, the Court has acknowledged that incompetents can have surrogates to protect their life and liberty interests. *Cruzan v. Director, Missouri Department of Health*, 50 C.C.H. S.Ct.Bull. B4106 (June 25, 1990). As an incompetent, an Illinois unborn child should have a surrogate to protect her life and liberty interests. But in Illinois a surrogate is only allowed to withdraw life-sustaining services if the incompetent has been diagnosed as terminally ill and either irreversibly comatose or in a persistent vegetative state. *In re Estate of Greenspan*, 137 Ill.2d 1 (1990), and *In re Estate of Longeway*, 133 Ill.2d 33, 139 Ill.Dec. 780, 549 N.E.2d 292 (1989). It would be clinically medically primative to consider a healthy, alert and thriving unborn child terminal, comotose or vegetative simply because she is in utero; life-sustaining services cannot be legally withdrawn from her. It matters not that such services are being provided in utero by her expectant mother. If in the exercise of her first liberty interests found in *Griswold*, a woman becomes pregnant, her second liberty interests must be balanced against the life and liberty interests of her unborn child. Being in direct conflict, *Roe* must be explicitly overruled.

Even in *Dred Scott*, the Court recognized the right of the States to establish personhood. *Dred Scott v. Sandford*, 60 U.S. 393, 426, 16 L.Ed. 691 (1857). In abolishing that right as to unborn children, *Roe* imposed a much greater infringement upon state sovereignty. However, *Roe* and *Dred Scott* do share one common thread--both deny human beings access to the courts. The Civil War, the Emancipation Proclamation, and the Post-War Constitutional Amendments negated the result of *Dred Scott*. The Court has the opportunity to negate both the result and analysis of *Roe*, and in the process, set the judicial tone for the next century of our republic--true respect for the humanity of all, as our forefathers intended. How we treat the least of us, is how we will ultimately be treated and judged.

CONCLUSION

For all of the foregoing reasons, this Court should grant this Petition for Writ of Certiorari and join *Turnock v. Ragsdale* (88-790) for argument on the merits.

Respectfully submitted,

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